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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID GORDON MOUNTFORD,

Defendant and Appellant.

B287245

(Los Angeles County
Super. Ct. No. GA080859)

APPEAL from an order of the Superior Court of Los Angeles County, Stanley Blumenfeld, Judge. Affirmed.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

This is defendant David Gordon Mountford’s third appeal challenging the trial court’s denial of his petitions for resentencing under Proposition 47 (Pen. Code, § 1170.18).¹ In our opinion addressing the first two appeals (*People v. Mountford* (Mar. 28, 2019, B286803, B287202) [nonpub. opn.], petn. for review pending, petn. filed May 6, 2019 (*Mountford I*)), we held that Mountford’s convictions of fraudulent use of personal identifying information and fraudulent possession of personal identifying information in violation of section 530.5, subdivisions (a) and (c)(2), and offering a false or forged instrument in violation of section 115, subdivision (a), were ineligible for resentencing under Proposition 47.

In this appeal, Mountford challenges the denial of his petition as to his February 1, 2011 convictions of fraudulent use of personal identifying information in violation of section 530.5, subdivision (a), possession of a forged driver’s license (§ 470b),² and forgery (§ 470, subd. (a)).

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² While referred to as possession of a forged driver’s license, section 470b actually provides: “Every person who displays or causes or permits to be displayed or has in his or her possession any driver’s license . . . with the intent that the driver’s license . . . be used to facilitate the commission of any forgery, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.”

BACKGROUND

On the evening of February 27, 2009, Mountford and two women went to the Trans Ocean Volkswagen dealership in Pasadena. Mountford said he was interested in purchasing three vehicles. He identified himself as Ernestas Dranseika and used Dranseika's federal tax identification number when completing a credit application. A credit check revealed a fraud alert as to that number. The sales manager called the police. When the police arrived, Mountford admitted attempting to purchase the vehicles with a stolen identity.

The police arrested Mountford. At the police station, Mountford identified himself as Douglas Korn. The police found a valid driver's license bearing the name of Douglas Korn in a Kia that Mountford said belonged to him. The police booked Mountford in the name of Douglas Korn. Mountford asked the police to leave the Kia parked where it was, but the police impounded it. Mountford signed the vehicle disposition form with the name Douglas Korn. The police then discovered Mountford's identity through his fingerprints.

The police subsequently learned that Mountford had purchased the Kia through fraudulent means in 2008. A police officer met with the finance manager of the Glendale Kia dealership. The finance manager stated that "Douglas Korn" had purchased the Kia for \$9,600 using four prepaid debit cards and a non-prepaid debit card with Korn's name on it. The officer went to the bank where the prepaid debit cards had been purchased and learned that Mountford had purchased the cards.

The officer attempted to locate Korn. Korn's parole officer indicated that Korn had been arrested by the FBI on September

8, 2008 and had been in federal custody since then. The officer went back to the Kia dealership. The used car sales manager identified Mountford from a photographic lineup as the person who had purchased the Kia using a driver's license and social security card in the name of Douglas Korn. The officer later spoke to Korn, who stated that he did not know Mountford and had not given Mountford permission to use his name or identification.

On February 1, 2011, pursuant to a plea agreement, Mountford pleaded guilty to two counts of identity theft (count 1, Ernestas Dranseika; count 13, Sherman Carter³), one count of possession of a forged driver's license (count 2, Dranseika), and one count of forgery of a credit application (count 6, Douglas Korn credit application).

In October 2017, Mountford filed petitions to reduce the four convictions to misdemeanors under Proposition 47. The People opposed the petitions on the ground that none of his convictions was eligible for Proposition 47 relief.

On December 14, 2017, the trial court denied the petitions. It explained that convictions of identity theft under section 530.5 are ineligible for resentencing under Proposition 47. Mountford's forgery convictions were ineligible for resentencing pursuant to section 473, subdivision (b), because he was also convicted of identity theft. Mountford timely appealed.

³ There is nothing in the record regarding the factual basis for this count.

DISCUSSION

I. Proposition 47

In November 2014, California voters enacted Proposition 47, “The Safe Neighborhoods and Schools Act.” (Cal. Const., art. II, § 10, subd. (a).) One purpose of Proposition 47 is “ ‘to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative.’ [Citations.] [Proposition 47] also expressly states an intent to ‘[r]equire misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.’ ” (*People v. Gonzales* (2017) 2 Cal.5th 858, 870.)

Proposition 47 reduced certain theft-related offenses from felonies or wobblers to misdemeanors, unless the offenses were committed by certain ineligible offenders. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Under Proposition 47, a defendant may be eligible for misdemeanor resentencing if the offense would have been a misdemeanor had Proposition 47 been in effect at the time of the offense, and he or she would have been guilty of a misdemeanor under Proposition 47.⁴ (§ 1170.18,

⁴ Under section 1170.18, subdivision (a), “[a] person who, on November 5, 2014, was serving a sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section . . . had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of

subds. (a) & (f); *People v. Gonzales, supra*, 2 Cal.5th at pp. 863, 875.) For eligible convictions, resentencing or redesignation under Proposition 47 is “required unless ‘the court, in its discretion, determines that resentencing the petitioner [or reclassifying the conviction as a misdemeanor] would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).)” (*Gonzales, supra*, at p. 863.)

II. Identity Theft Under Section 530.5, Subdivision (a)

Mountford I addressed the question whether convictions under section 530.5, subdivisions (a) and (c),⁵ are eligible for

the Penal Code.” Under section 1170.18, subdivision (f), “[a] person who has completed his or her sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.”

⁵ Under section 530.5, subdivision (a), “[e]very person who willfully obtains personal identifying information . . . of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense.” If convicted under this subdivision, the defendant “shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170.”

Under section 530.5, subdivision (c)(1), “[e]very person who, with the intent to defraud, acquires or retains possession of the personal identifying information . . . of another person is guilty of a public offense.” If convicted under this subdivision, the

resentencing under Proposition 47. We noted there was currently a split of authority in the Courts of Appeal on this question, and it was now before the Supreme Court. (See *People v. Jimenez* (2018) 22 Cal.App.5th 1282, 1291-1292 [conviction for unauthorized use of personal identifying information was properly reduced to misdemeanor shoplifting], review granted July 25, 2018, S249397; *People v. Sanders* (2018) 22 Cal.App.5th 397 [unauthorized use of personal identifying information is not a theft offense and should not be considered as petty theft or reduced to misdemeanor], review granted July 25, 2018, S248775.) After analyzing the two cases before the Supreme Court, as well as others, we held that fraudulent use of personal identifying information and fraudulent possession of personal identifying information in violation of section 530.5, subdivisions (a) and (c)(2), were not theft offenses and therefore did not fall within the purview of Proposition 47.

The Supreme Court has not yet spoken on this issue. In the absence of any authority to the contrary, for the reasons we stated in *Mountford I*, we conclude that Mountford's two convictions of fraudulent use of personal identifying information in violation of section 530.5, subdivision (a), were not eligible for

defendant "shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment." Under subdivision (c)(2) of section 530.5, a person who violates subdivision (c)(1) and "has previously been convicted of a violation of this section, upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170."

resentencing under Proposition 47. The trial court therefore did not err in denying Mountford's petitions as to these convictions.

III. Forgery Under Section 470, Subdivision (a)

As stated above, the trial court found that Mountford's forgery and possession of a forged driver's license convictions were ineligible for resentencing pursuant to section 473, subdivision (b), because he was also convicted of identity theft. While the trial court was incorrect, we nonetheless conclude it did not err in finding the convictions ineligible for resentencing under Proposition 47.⁶

Proposition 47 made certain types of forgery eligible for resentencing as a misdemeanor. Subdivision (b) of section 473 provides that "any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be

⁶ We review the trial court's ruling, not its reasoning; if the ruling is correct on any ground, we will affirm. (*People v. Cowan* (2010) 50 Cal.4th 401, 473, fn. 25.)

applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.”

The People concede that because Mountford’s forgery and identity theft convictions arose out of separate transactions, Mountford’s identity theft convictions do not preclude resentencing on his forgery conviction. (*People v. Gonzales* (2018) 6 Cal.5th 44, 46-47.) They argue, however, that Mountford failed to show that his forgery conviction was eligible for resentencing, because he failed to show that the amount in question did not exceed \$950. Mountford contends that his statement in his petition that the amount in question did not exceed \$950 met his burden of proof. The parties’ focus on the value attached to the forgery misses the mark. It should have been on the nature of the forged document.

In *People v. Martinez* (2016) 5 Cal.App.5th 234, the defendant was convicted of forging a receipt for goods. The court observed: “The plain language of section 473 is clear and unambiguous. Under subdivision (b) of section 473, a forgery conviction is a misdemeanor if the instrument utilized in the forgery is a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order with a value of \$950 or less. If the forgery does not involve one of the seven instruments specified in section 473, subdivision (b), it is a wobbler under subdivision (a) of section 473.” (*Id.* at p. 241; accord, *People v. Aguirre* (2018) 21 Cal.App.5th 429, 433; *People v. Bloomfield* (2017) 13 Cal.App.5th 647, 652-653; see, e.g., *People v. Gollardo* (2017) 17 Cal.App.5th 547 [forging a prescription for narcotics not included in Proposition 47].) A receipt for goods was “not one of the seven instruments specified in section 473, subdivision (b).” (*Martinez, supra*, at p. 241.) Therefore, the defendant’s conviction was

ineligible for resentencing as a misdemeanor under Proposition 47. (*Ibid.*)

A credit application is not “one of the seven instruments specified in section 473, subdivision (b).” (*People v. Martinez, supra*, 5 Cal.App.5th at p. 241.) Therefore, Mountford’s forgery conviction was not eligible for resentencing under Proposition 47, and the trial court did not err in denying his petition as to that conviction. (*Ibid.*)

IV. Possession of a Forged Driver’s License Under Section 470b

As noted in *People v. Aguirre, supra*, 21 Cal.App.5th at page 433, “while there are numerous forgery offenses (e.g., §§ 470, subds. (a)-(d), 470a, 470b, 471, 472, 474, 475, subds. (a)-(c), 476), Proposition 47 singled out only ‘seven specific instruments for reduced punishment,’ and the voters ‘signaled their intent *not* to include all forgery offenses in Proposition 47.’ [Citations.]” A forged driver’s license is not one of the seven instruments listed in section 473, subdivision (b). Therefore, Mountford’s conviction of possession of a forged driver’s license in violation of section 470b was not eligible for resentencing under Proposition 47. (*Aguirre, supra*, at p. 433; *People v. Bloomfield, supra*, 13 Cal.App.5th at pp. 652-653.) Again, the trial court did not err in denying Mountford’s petition as to this conviction.

DISPOSITION

The order is affirmed.
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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.